

EXHIBIT C

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE		PAGE OF PAGES 1 24	
2. AMENDMENT/MODIFICATION NO. P00016		3. EFFECTIVE DATE 12-May-2020		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO. (If applicable)	
6. ISSUED BY ACC - APG - W91CRB BLDG 4310 6515 INTEGRITY COURT ABERDEEN PROVING GROUND MD 21005-3013		CODE W91CRB		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) MICROSOFT CORPORATION MICROSOFT [REDACTED] 1 MICROSOFT WAY REDMOND WA 98052-8300				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W91CRB1990001			
				X 10B. DATED (SEE ITEM 13) 20-Nov-2018			
CODE 60128		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required)							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Agreement Article XIV Modifications							
D. OTHER (Specify type of modification and authority)							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: [REDACTED] Obligation Amount: \$0.00 This no cost, bilateral modification: 1. Incorporates updated Attachment #4 titled "GFP-GFI List_as of 7 July 2020" 2. Incorporates updated Attachment #6 titled "Line Item Structure-Payment Schedule_as of 12 May 2020". POC: [REDACTED] All other terms and conditions under this Agreement, as executed on 20 November 2018, inclusive of any subsequent, executed, modifications and attachments thereto, remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print)				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) [REDACTED] / CONTRACTING OFFICER			
				TEL: [REDACTED] EMAIL: [REDACTED]			
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA BY [REDACTED] (Signature of Contracting Officer)		16C. DATE SIGNED 31-Jul-2020	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION C - DESCRIPTIONS AND SPECIFICATIONS

The following have been modified:

AGREEMENT

OTHER TRANSACTION AGREEMENT BETWEEN
The United States of America
AND
The Microsoft Corporation

Agreement No.: W91CRB-19-9-0001

This Other Transaction Agreement (“OTA” or “Agreement”) is entered into between the United States of America, hereinafter called the Government, pursuant to and under U.S. Federal law, and the Microsoft Corporation, hereinafter called the Company or Microsoft, with an address at One Microsoft Way, Redmond, WA 98052.

Agreement Term: The term of this Agreement is [REDACTED] from the Effective Date. The maximum value of the Prototype Project to be awarded under the terms and conditions of this Agreement is [REDACTED].

Authority: 10 U.S.C. § 2371b(a), Section 815, Amendments to Other Transaction for Prototype Agreement, of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 which inserted Section 2371b, Authority of the Department of Defense to carry out Prototype Projects and as further amended up to the date of execution of this Agreement.

Check one:

Company X IS/ IS NOT a NON-TRADITIONAL DEFENSE CONTRACTOR. As per 10 USC 2302(9) a Non-Traditional Defense Contractor is an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting standards prescribed pursuant to section 1502 of title 41 and the regulations implementing such section.

Signature of Authorized Company Representative

Printed Name

Title

Date

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ARTICLE I: SCOPE OF THE AGREEMENT**A. Background:**

This Other Transaction Agreement (OTA) is awarded to the Microsoft Corporation, hereinafter referred to as "the Company" or "Microsoft". The objective of the Integrated Visual Augmentation System (IVAS) Prototype Program is to provide a Heads-Up Display (HUD) 3.0 and integrated STE Squad capability within the Squad Architecture in support of Army, Marines, and Special Operations Forces [REDACTED] in accordance with Microsoft's proposal dated 09 November 2018.

B. Definitions:

"Agreement" or "OTA" refers to the Other Transaction Agreement, as authorized under IO U.S.C. 2371b, between the Government and Microsoft, Agreement No. W91CRB-19-9-0001.

"Agreements Officer (AO)" is the United States Army Contracting Command - APG Activity warranted Contracting Officer authorized to sign the final agreement for the Government.

"Agreements Officer's Representative (AOR)" is the individual designated by the Government to monitor all technical aspects; the AOR shall only assist in agreement administration of the IVAS Prototype Program to the extent expressly delegated such administration authority in writing in the Agreement by the responsible Agreements Officer.

"Contracting Activity" means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements, or another agency designated by the director of a defense agency which has been delegated contracting authority through its agency charter.

"Date of Completion" is the date on which all work is completed or the date on which the period of performance ends.

"Development" means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of an existing or potential new technology, product or service (or of an improvement in an existing technology, product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the research functions of design engineering, prototyping, and engineering testing.

"Effective Date" means the date when this Agreement is signed and executed by the Agreements Officer for the Government after signature by the authorized Microsoft official.

"Government" means the U.S. Government operating through the United States Army Contracting Command – Aberdeen Proving Ground ("ACC-APG").

"Government Fiscal Year" means the period commencing on October 1 and ending September 30 of the following calendar year.

"Other Transactions Agreement (OTA)" is the term commonly used to refer to the 10 USC 2371b authority to enter into transactions other than contracts, grants or cooperative agreements. The Department of Defense (DoD) currently has authority to make awards that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. OTAs are acquisition instruments that generally are not subject to the federal laws and regulations governing procurement (FAR based) contracts. As such, they are not required to comply with the Federal Acquisition Regulation (FAR), its supplements (i.e. DFARS) or laws that are limited in applicability to procurement contracts.

"Parties" means the Government and the COMPANY by its authorized agent where collectively identified and

"Party" where each entity is individually identified.

"Program" means the overall effort to be funded by the Agreement, which is described in the Proposal.

"Signatory Authority" refers to the individual that has the authority to legally bind a Party to an agreement.

C. Agreement Administration:

Unless otherwise provided in this Agreement, approvals permitted or required to be made by the Government may be made only by the ACC-APG Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the Parties:

AO:

[REDACTED]

AOR:

[REDACTED]

Cognizant Defense Finance and Accounting Services (DFAS):

DFAS –INDY VP GFEBs
8899 E. 56th Street
Indianapolis, IN 46249-3800

Microsoft Contract Administrator:

[REDACTED]

[REDACTED]

Each Party may change its representatives named in this Article by written notification to the other Party.

D. Scope:

The scope of this program is described in the Proposal by Microsoft and accepted by the Government and incorporated into this Agreement. The Proposal is incorporated herein as Attachment # 1. Further the scope of this program is described in the Data Requirements List at Attachment # 2, incorporated herein, which may be modified as stated in Article XVIII: Program Management. Further Attachment # 3: DD 254, Attachment # 4: GFI/GFP List Attachment # 6: Line Item Structure/Payment Schedule are incorporated herein.

The Attachment listed below are incorporated for reference purposes only:

Attachment # 5: Statement of Objectives (SOO)

ARTICLE II: TERM

A. Term of Agreement:

The term of this OTA is a period of [REDACTED] from the Effective Date of the OTA.

Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified in Article II herein, shall be given effect, notwithstanding this Article.

B. Termination of Agreement Provision:

1. Termination for Convenience. Subject to a reasonable determination that the Program will not produce beneficial results commensurate with the expenditure of resources, either Party may terminate performance of work under this OTA, in whole or in part. The terminating Party shall terminate by delivering to the other Party a Notice of Termination specifying the extent of termination and the effective date. Such notice shall be provided at least 30 days in advance of the termination effective date.

2. Termination for Default. Either Party may terminate this OTA if the other Party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding.

3. In the event of a termination by under paragraph B.1 or,

a. The Government agrees to pay all outstanding completed Line Items in accordance with Attachment # 6 and the parties shall agree upon the amount to be paid or remaining to be paid because of the termination. Failure of the Parties of the parties to reach said agreement shall be resolved pursuant to Article IV, Disputes

b. As directed by the AO, COMPANY shall transfer title to the following, where applicable, and deliver to the Government –

(i) The physical fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated which would have been required to be furnished to the Government if the order had been completed; and

(ii) The completed or partially completed plans, drawings, and other tangible property (but expressly excluding software code) that, if the order had been completed, would have been required to be furnished to the Government.

c. The Government shall have the data rights described in the Data Rights Assertions section of the Proposal to items delivered for which payment has been received as prescribed in this Agreement and the proposal.

4. Any termination under paragraph B.2 shall be handled under and in accordance with ARTICLE IV, Disputes.

5. Nothing in this section (B. Termination of Agreement Provision) shall be construed as a limitation of the rights of either Party in the event of a breach of contract or default by the other Party.

C. Stop Work Clause:

1. As directed by the AO, the COMPANY shall stop all, or any part, of the work called for under this Agreement for a period of 90 days after the written order is delivered, and for any further period to which the Parties may agree. The order shall be specifically identified as a stop-work order issued under this Article. Upon receipt of the order, the COMPANY shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered, or within any extension of that period to which the Parties shall have agreed, the AO shall either:

a. Cancel the stop-work order; or

b. Terminate the work covered by this Agreement in accordance with paragraph B.1 above

2. If a stop work order issued under this clause is canceled, the COMPANY shall resume work. The Government shall make an equitable adjustment in the delivery schedule or negotiated price, or both, and the Government's share of this Agreement shall be modified, in writing, accordingly, if--

a. The stop work order results in an increase in the time required for, or in the cost properly allocable to, the performance of any part of this Agreement; and

b. The COMPANY asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Government decides the facts justify the action, the Government may receive and act upon a proposal submitted at any time before final payment under this Agreement.

ARTICLE III: OBLIGATION AND PAYMENT

A. Definitions:

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area Work Flow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

“Option” A unilateral right in the Agreement by which, within a specified period, the Government may elect to purchase additional supplies or services called for by the Agreement and represented as an unfunded line item.

B. Obligation:

Except as specified in Article IV: Disputes, the Government's liability to make payments to the COMPANY is limited only to those funds obligated under this Agreement or funds obligated by modification to the Agreement. If modification becomes necessary in performance of this Agreement, pursuant to Article XIV of this Agreement, the AO and the COMPANY, if applicable, shall establish and execute a mutually agreed to revised Schedule of Payable Milestones and amounts consistent with the then current Proposal/Program plan.

C. Payment:

The COMPANY shall submit invoices for processing as outlined below via The Invoice, Receipt, Acceptance, and Property Transfer (iRAPT) application of the Wide Area Work Flow (WAWF) system, according to the guidelines set forth in DFARS Subpart 232.70 and DFARS 252.232-7003 Electronic Submission of Payment Requests and Receiving Reports.

1. To access WAWF, the COMPANY shall--

- a. Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and
- b. Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this Web site.

2. WAWF training. The COMPANY should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>.

3. WAWF methods of document submission. Document submissions may be via Web entry, Electronic Data Interchange, or File Transfer Protocol.

4. WAWF payment instructions. The COMPANY must use the following information when submitting payment requests and receiving reports in WAWF for this agreement/order:

5. Document type. The COMPANY shall use the following document type(s): Combo Invoice/Receiving Report or Cost Voucher

6. Inspection/acceptance location. The COMPANY shall select the following inspection/acceptance location(s) in WAWF:

Inspection at ORIGIN / Acceptance at DESTINATION

7. Document routing. The COMPANY shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table*

8. Payments. Payments will be made by Defense Finance and Accounting Service (DFAS):

D. Electronic Fund Transfer:

COMPANY must be enrolled in EFT by contacting the paying office designated in the Agreement and requesting form SF 3881, Automated Clearing House ("ACH") Vendor/Miscellaneous Payment Enrollment Plan. This form must be completed by the COMPANY and the COMPANY's financial institution and returned to the paying office. The paying office will complete the process and notify the AOR, as agent of the COMPANY, that EFT enrollment is complete. All payments under this agreement will be held until the AO provides the required EFT enrollment information for the COMPANY.

Registration in the System Award for Management (SAM) is mandatory.

E. Limitation of Funds:

Except as set forth in Article IV, the Government's financial liability will not exceed the amount obligated under this Agreement in accordance with Line Item structure in Attachment # 6.

F. Financial Records and Reports:

The COMPANY shall maintain adequate records consistent with the COMPANY's generally accepted accounting principles, to account for Federal funds received under this Agreement. COMPANY relevant financial records are subject to examination or audit on behalf of the Government for a period not to exceed [REDACTED] after expiration of the term of the Agreement. The Government shall have direct access to sufficient records and information of the, COMPANY to ensure full accountability for all funding under this Agreement. Such audit, examination or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited Party. Any audit required during the course of the program may be conducted by the Government using Government auditors or, at the request of COMPANY, COMPANY's external CPA accounting firm at the expense of the COMPANY.

G. Payment Schedule:

Payments shall be made in accordance with the Line Item structure set forth at Attachment # 6. COMPANY shall invoice, and the Government shall pay COMPANY upon delivery of or completion (as applicable) of each Line Item (e.g., Line Item No. 0001 CS1- Prototype Delivery; Line Item No. 0002- completion of CS2-Build Readiness Review). COMPANY shall have successfully completed each Line Item when it demonstrates the Line Item delivered/completed substantially meets the description of each Line Item as set forth in the Proposal and as modified through the iterative prototyping and testing phases (collectively, the "success criteria"). If the Government determines COMPANY has not substantially met the relevant success criteria, then COMPANY shall be given a detailed description explaining the Government's reasons why it believes COMPANY has failed to substantially meet such relevant success criteria. COMPANY shall be given a reasonable opportunity to cure stated deficiencies or otherwise demonstrate substantial compliance.

H. Options:

Attachment # 6 includes Line Items identified as an option item/unfunded line item, in the quantity and at the price stated in the Schedule. The Government may exercise the option by notifying the COMPANY within [REDACTED] prior to the end of Soldier Touch Point (STP) preceding the option to be exercised or earlier. The Government will provide the COMPANY notice [REDACTED] prior to the end of the preceding Soldier Touch Point (STP) if the following option is not to be exercised or earlier. Performance shall continue at the same rate that like items are called for under the contract unless the parties otherwise agree.

ARTICLE IV: DISPUTES

A. General:

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

B. Dispute Resolution Procedures:

1. Any disagreement, claim or dispute between the Government and the COMPANY concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose prior to Request for White Paper Date of 22 AUG 2018 made under this Article constitute the basis for relief under this Article unless the Chief of the Contracting Office, ACC-APG in the interest of justice waives this requirement, which waiver shall not be unreasonably withheld.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the respective AO) in writing documenting the relevant facts, identifying unresolved issues, specifying the clarification or remedy sought, and documenting the rationale as to why the clarification/remedy is appropriate. Within ten (10) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the Chief of the Contracting Office, ACC-APG. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Chief of the Contracting Office, ACC-APG will conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such position. Any such decision is final and binding, unless a Party shall, within thirty (30) calendar days request further review as provided by this Article.

4. If requested within thirty (30) calendar days of the decision by the Chief of the Contracting Office, ACC-APG, further review will be conducted by a senior official of the COMPANY and the ACC-APG Director of Contracting. In the event of a decision, or in absence of a decision within sixty (60) calendar days of referral to the senior official of the COMPANY and the ACC-APG Director of Contracting (or such other period as agreed to by the Parties), either Party may pursue any right or remedy provided by law. Alternatively, the Parties may agree to explore and establish an Alternate Disputes Resolution procedure to resolve this dispute.

C. Limitation of Liability and Damages

1. In no event shall the liability of the COMPANY exceed the funding received by COMPANY for its performance of this Agreement.

2. No Party shall be liable to any other Party for consequential, punitive, special and incidental damages or other indirect damages, whether arising in agreement (including warranty), tort (whether or not arising from the negligence of a Party) or otherwise, except to the extent such damages are caused by a Party's willful misconduct.

ARTICLE V: CONFIDENTIAL INFORMATION

A. Definitions:

"Disclosing Party" means either the COMPANY, or its subsidiaries, affiliates, their subcontractors or suppliers, or the Government that discloses Confidential Information to the other Party as contemplated by the subsequent paragraphs.

"Receiving Party" means either the COMPANY, or its subsidiaries, affiliates, their subcontractors or suppliers, or the Government that receives Confidential Information disclosed by a Disclosing Party.

"Confidential Information" means information and materials of a Disclosing Party which are designated as confidential or as a Trade Secret in writing by such Disclosing Party, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Confidential Information includes, but is not limited to Data which existed prior to, or was produced outside of this Agreement which embodies trade secrets or comprises commercial or financial information which is privileged or confidential. "Confidential Information" also includes any information and materials considered a Trade Secret by the COMPANY on its own behalf or on behalf of its subcontractors or suppliers. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend, shall constitute Confidential Information or a Trade Secret if such Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. If the receiving party reasonably determines that the memorialization of the exchange is insufficiently detailed to enable it to identify the privileged or confidential information, the disclosing party shall provide additional detail at the receiving party's request, subject to restrictions on use and disclosure.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- (a) The owner thereof has taken reasonable measures to keep such information secret; and
- (b) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

B. Exchange of Information:

The Government may from time to time disclose Government Confidential Information to the COMPANY, its subsidiaries, affiliates, and its subcontractors or suppliers, in connection with the OPSEC requirements and similar processes or particular projects, and the COMPANY, its subsidiaries, affiliates, their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with the OTA, an OTA proposal, Payment Instruction, Agreement, or performance thereunder. Neither the Government nor COMPANY, its subsidiaries, affiliates, or their subcontractors or suppliers, nor the AO shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Government or by the COMPANY, its subsidiaries, affiliates, or their subcontractors or suppliers, absent an express written agreement between the Parties providing the terms and conditions for such disclosure.

C. Confidentiality and Authorized Disclosure:

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party (the Receiving Party shall not disclose the Disclosing Party's Confidential Information and Trade Secrets unless it has the right to do so), and that, unless otherwise agreed to by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated by the Receiving Party to third Parties or used by the Receiving Party for any purposes other than in connection with specified Program efforts and the licenses granted in Article VIII, Patent Rights, and Article VII, Data Rights, provided that the duty to protect such "Confidential Information" and "Trade Secrets" shall not extend to materials or information that:

1. Are received or become available without restriction to the Receiving Party under a proper, separate agreement,

2. Are not identified with a suitable notice or legend per Article entitled "Confidential Information" herein
3. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure thereof as demonstrated by prior written records,
4. Are or later become part of the public domain through no fault of the Receiving Party,
5. Are received by the Receiving Party from a third Party having no obligation of confidentiality to the Disclosing Party that made the disclosure,
6. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets as evidenced by written records, or
7. Are required by law or regulation to be disclosed; provided, however, that the Receiving Party has provided written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent disclosure of such information.

D. Return of Confidential Information:

Upon the request of COMPANY, the Government shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets disclosed. Upon request by the Government, COMPANY shall promptly return all copies and other tangible manifestations of the Confidential Information disclosed by the Government. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

E. Term:

Except to the extent covered by and subject to other provisions of this Agreement, the obligations of the Receiving Party under this Article shall continue after the expiration or termination of this Agreement.

F. Requirements Flow-down:

The Government and the COMPANY shall flow down the requirements of this Article V to their respective personnel, agents, partners, and team members receiving such Confidential Information or Trade Secrets under this OTA.

G. Restriction of Work Assignments:

Neither party is required to restrict work assignments of representatives who have had access to Confidential Information. The parties agree that use of information in representatives' unaided memories in the development or deployment of our respective products or services does not create liability under this agreement or trade secret law, and the parties agree to limit what they disclose to the other accordingly.

ARTICLE VI: PUBLICATION

A. Use of Information:

Subject to review and mutual agreement by both Parties, the provisions of Article V, Confidential Information, Article VI, Publication, and classified information, the COMPANY and the Government shall have the right to publish or otherwise disclose information and/or data developed by the Government and/or the respective COMPANY with respect to the unique IVAS Prototype features developed under this Agreement. The COMPANY and the Government (and its employees) shall include an appropriate acknowledgement of consent by the Government and the COMPANY in such publication or disclosure. The Parties shall have only the right to use, disclose, and exploit any such data and Confidential Information or Trade Secrets in accordance with the rights held by them pursuant to this Agreement. Notwithstanding the above, the Parties shall not be deemed authorized by this paragraph VI.A, alone, to disclose any Confidential Information or Trade Secrets of the other Party, or to limit disclosure of a Party's own Confidential or Trade Secrets by that Party.

B. Classified Research Projects:

If a release of Confidential Information or Trade Secrets is for a classified Research Project, the provisions of the DoD Security Agreement (DD Form 441), Certificate Pertaining to Foreign Interests (SF 328), and the DoD Contract Security Classification Specification (DD Form 254) apply. The Government will be responsible for the completion of the DD Form 254. The COMPANY member must complete the DD Form 441 and SF 328 and

provide them to the Government through for review by the proper Government representatives, the Industrial Security Representative at the cognizant Defense Security Service (DSS) office for DD Form 441 and SF 328 and the VRA's local Security office for the DD Form 254.

C. Review or Approval of Technical Information for Public Release:

1. At least 30 days prior to the scheduled release date, COMPANY shall submit to the AO two copies of the information to be released along with Clearance of Technical Information for Public Release Form INME-PIC-IM Form 3002, 1 MAR 2011, who will route the information to the AOR and other appropriate Parties for review and approval. The AOR is hereby designated as the approval authority for the AO for such releases.
2. Parties to this Agreement are responsible for assuring that an acknowledgment of government support will appear in any publication of any Category C material developed under this OTA, using the following acknowledgement terms:

"Effort sponsored by the U.S. Government under Other Transaction number W91CRB-19-9-0001 between the Microsoft Corporation and the Government. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation thereon."

3. Parties to this Agreement are also responsible for assuring that every publication of Category C data developed under this program contains the following disclaimer:

"The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government."

4. The COMPANY shall flow down these requirements to its partners and team members, at all tiers.
5. The COMPANY, and its major suppliers, shall not discuss or display the IVAS solution/system, in a public forum such as a Conference, Industry symposium, Workshop without the consent of the AO.

D. Filing of Patent Applications:

During the course of any such thirty (30) calendar day period, the COMPANY and/or the Government shall provide notice to the AO as to whether it desires that a patent application classified as Category C Data be filed on any invention disclosed in such materials. In the event that a COMPANY and/or the Government desires that such a patent be filed, the COMPANY or the Government proposing to publish or disclose such materials agrees to withhold publication and disclosure of such materials until the occurrence of the first of the following:

1. Filing of a patent application covering such invention, or
2. Written agreement, from the AO and the COMPANY that no patentable invention is disclosed in such materials.
3. Further, during the course of any such thirty (30) calendar day period, the COMPANY shall notify the Government if it believes any of its Confidential Information or Trade Secrets have been included in the proposed publication or disclosure and shall identify the specific Confidential Information or Trade Secrets that need to be removed from such proposed publication. The Government and the COMPANY agree to remove from the proposed publication or disclosure all such Confidential Information or Trade Secrets so identified by the COMPANY.
4. For the avoidance of doubt, COMPANY retains the entire right, title, and interest throughout the world for each Invention whose Data is classified as Category A or B regardless of whether a patent application has been filed, retains sole discretion whether to file a patent application, and does not require notification or prior agreement from GOVERNMENT.

ARTICLE VII: DATA RIGHTS

A. Definitions:

"Commercial Computer Software" as used in the Article is defined in DFARS 252-227-7014(a)(1) (Jun 1995).

"Computer program" as used in this Agreement means a set of instructions, rules, or routines in a form that is capable of causing a computer to perform a specific operation or series of operations.

"Computer software" as used in this Agreement means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the

software to be reproduced, recreated or recompiled. Computer software does not include computer data bases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" as used in this Article of this Agreement, means computer software, computer software documentation, form, fit and function data, and technical data as defined in this Article.

"Form, fit and function data" means technical data that describes the required overall physical, functional and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

"Government purpose rights" means the rights to use, modify, duplicate or disclose the "Data" licensed with such rights under this Agreement within the Government for United States Government purposes only; and to release or disclose data outside the Government to any authorized persons pursuant to an executed non-disclosure agreement for such persons' use, modification, or reproduction for United States Government purposes only. United States Government purposes include Foreign Military Sales purposes and competitive re-procurement.

"Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including Computer Data Base, mask works, chip circuit designs and tapeouts, and computer software documentation). The term does not include computer software or data incidental to agreement administration, such as financial and/or management information.

B. Data Categories:

1. Category A is Data developed and paid for totally by non-governmental funds, whether pre- existing or concurrently developed, and including, but not limited to, proprietary data, trade secret data, or data related to COMPANY products. The COMPANY retains all rights to Category A Data. Items classified as Category A Data under this Agreement are set forth in the Data Rights Assertion section of the Proposal.
2. Category B is any Data developed under this Agreement, using Government funds, which cannot be disclosed without compromising the Category A data. Items classified as Category B Data under this Agreement are set forth in the Data Rights Assertion section of the Proposal.
3. Category C is any COMPANY developed Data, excluding Category A and B data, developed during the performance of work under this Agreement. Items classified as Category C Data under this Agreement are set forth in the Data Rights Assertion section of the Proposal.
4. Category D is third Party proprietary data used in performance of work under this Agreement, including but not limited to, technical data, software, trade secrets and mask works.
5. Any Data developed outside of this Agreement with Government funding in whole or in part under a Government agreement, contract or subcontract shall have the rights negotiated under such prior agreement, contract or subcontract; the Government shall get no additional rights in such Data under this Agreement.

C. Allocation of Principal Rights:

1. [REDACTED]
2. [REDACTED]

3. [REDACTED]

4. The COMPANY shall deliver, or assist the Government in it obtaining, third-Party computer software, Category D data, as required for the performance or operation of other computer software required to be delivered as described in the Proposal, with such rights as it is able to negotiate with the software vendor. The COMPANY shall use reasonable efforts in such negotiations to obtain rights adequate for the Government's purposes and shall provide to the Government the details as set forth in the Data Rights section of the Proposal.

5. Data that will be delivered, furnished, or otherwise provided to the Government under this Agreement, in which the Government has previously obtained rights under a separate Government-funded agreement, shall be delivered, furnished, or provided with the pre-existing rights, unless (a) the Parties have agreed otherwise, or (b) any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

D. Marking of Data:

Any Data delivered under this Agreement with Category C Data Rights, shall be marked with the following legend:

"This data is being delivered as Category C Data, as defined in Agreement W91CRB-19-9-0001. Use, duplication, or disclosure is subject to Government Purpose Rights in accordance with Agreement W91CRB-19-9-0001 between the COMPANY and the Government."

In the event that the COMPANY learns of a disclosure to the Government of its unmarked Data that should have contained a restricted legend, the COMPANY will have the opportunity to cure such omission going forward by providing written notice to the AO within six (6) months of the erroneous disclosure.

E. Copyright:

The COMPANY reserves the right to protect by copyright works developed under this Agreement. All such copyrights will be in the name of the COMPANY or the author, as determined by COMPANY policies. The COMPANY hereby grants to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies, and perform and display, , any copyrighted materials classified as Category C Data which was developed and delivered under this Agreement.

F. Lower Tier Agreements:

The COMPANY shall include this Article, suitably modified to identify the Parties, in all, subcontracts or lower tier agreements, regardless of tier, or experimental, developmental, or research work.

G. Commercial Off The Shelf Manuals:

The Government shall have a non-exclusive, limited right to use, reproduce and distribute as necessary for DOD training purposes any commercial off-the-shelf manuals provided as part of this Program

H. Survival Rights:

Provisions of this Article shall survive termination of this Agreement.

ARTICLE VIII: PATENT RIGHTS

A. Definitions:

"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and in each case, under such conditions as to establish that the invention is capable of being utilized.

"Subject Invention" means any invention of the COMPANY conceived or first actually reduced to practice in the performance of work under this Agreement which pertains to an item, component or process whose Data is classified as Category C Data.

"Background Invention" means any invention made by the COMPANY, or their subcontractors of any tier, prior to performance of the Agreement or outside the scope of work performed under this Agreement.

B. Allocation of Principal Rights:

The COMPANY shall retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article, and 35 U.S.C § 202. With respect to any Subject Invention in which the COMPANY retains title, the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention for internal evaluation purposes of the deliverable under this Agreement only throughout the world. The COMPANY may elect to provide full or partial rights that it has retained to other Parties.

C. Invention Disclosure, Election of Title, and Filing of Patent Application:

1. The COMPANY shall disclose each Subject Invention to the AO (in a format determined by the COMPANY) within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.
2. If the COMPANY determines that it does not intend to retain title to any such invention, regardless of whether the COMPANY has decided to file or not file a patent application the COMPANY shall notify the AO, in writing, within nine (9) months of disclosure of the Subject Invention to the Government Contracting Activity. However, in any case where public disclosure by the inventor has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice shall be in no event less than 60 days prior to the one (1) year statutory bar date.
3. The COMPANY shall file its initial patent application on a Subject Invention to which it has decided to file a patent application within one (1) year after any publication, or sale, or public use. The COMPANY may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within the time frames required by those countries and subject to any time requirements where permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. After considering the position of the COMPANY, a request for extension of the time for disclosure, and filing under this Article VIII, paragraph C, may be approved by the Government, which Government approval shall not be unreasonably withheld.
5. The Government agrees to execute or to have executed and promptly deliver to the COMPANY all instruments necessary to establish or confirm the rights the COMPANY has throughout the world, and to obtain patent protection throughout the world, in inventions of the COMPANY conceived or first actually reduced to practice in the performance of work under this Agreement, including, but not limited, to assignments and declarations.

D. Conditions When the Government May Obtain Title:

Upon the Government's written request, the COMPANY shall convey title to any Subject Invention to the Government under any of the following conditions:

If the COMPANY elects not to retain title to the Subject Invention within the times specified in Article VIII, paragraph C.2.; provided, that the Government may only request title within sixty (60) calendar days after learning of the failure of the COMPANY electing not to retain title. For the sake of clarity, COMPANY deciding to not pursue a patent application on a Subject Invention is not the same as COMPANY electing not to retain title to the Subject Invention.

E. Minimum Rights to the COMPANY and Protection of the COMPANY's Right to File:

The COMPANY shall retain a nonexclusive, irrevocable, royalty free sublicensable license, to make, have made, use, sell, offer for sale, or import, throughout the world in each Subject Invention to which the Government obtains title. The COMPANY license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the COMPANY is a Party and includes the right to grant licenses of the same scope to the extent that the COMPANY was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the invention pertains. The Government approval for license transfer shall not be unreasonably withheld.

F. Action to Protect the Governments Interest:

1. The COMPANY agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to: 1. establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the COMPANY elects to retain title; and 2. convey title to the Government when requested under this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. The COMPANY agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified, as responsible for the administration of patent matters, and in a format suggested by the COMPANY, each Subject Invention made under this Agreement in order that the COMPANY can comply with the disclosure provisions under this Article. The COMPANY shall instruct its employees, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.

Where applicable, the COMPANY shall include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

"This invention was made with Government support under Agreement No. W91CRB-19-9-0001. The Government has certain rights in the invention."

G. Lower Tier Agreements:

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

J. Authorization & Consent and Notice & Assistance Regarding Infringement:

FAR 52.227-1 (Authorization and Consent (Dec 2007)) and Alternate I (Apr 1984) and FAR 52.227-2 (Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)) are also incorporated by reference under this Agreement.

K. Defense of Third-Party Claims:

1. By COMPANY. COMPANY will defend Government against any claims made by an unaffiliated third party that any Deliverable made available under this Agreement by COMPANY infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret. COMPANY will pay the amount of any resulting adverse final judgment or approved settlement.

This does not apply to claims or awards based on:

- a. modifications to a Deliverable Government makes or any specifications or materials Government provides;
- b. Government's use of a COMPANY trademark without express, written consent or the use or redistribution of a Deliverable in violation of this Agreement; or
- c. Government's continued use of a Deliverable after being notified to stop due to a third-party claim except as provided below.

2. Rights and remedies in case of possible infringement or misappropriation. If COMPANY reasonably believes that a claim under this section may result in a legal bar prohibiting Government's use of a Deliverable, COMPANY will seek to obtain the right for Government to keep using it or modify or replace it with a functional equivalent, in which case Government must discontinue use of the prior version immediately. If these options are not commercially reasonable, COMPANY may terminate Government's right to the Deliverable and refund any amounts Government has paid for those rights to the Deliverable. Prior to terminating the Government's right to any Deliverable or requiring the Government to modify or replace the Deliverable with a functional equivalent in accordance with the previous sentence, Microsoft shall provide Government sufficient notice to allow the Government to invoke authorization and consent in accordance with FAR 52.227-1 at its sole discretion.

3. Other terms. Government must notify COMPANY promptly in writing of a claim subject to this section; give COMPANY sole control over the defense and settlement (subject to 28 U.S.C. § 516); and provide reasonable assistance in defending the claims. COMPANY will reimburse Government for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

4. Notwithstanding the foregoing, COMPANY's rights set forth in this section (and the rights of the third-party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY AND EXPORT CONTROL

A. Foreign Access to Technology:

This Article IX shall remain in effect during the term of this Agreement.

B. Definitions:

"Foreign Firm or Institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this Agreement.

C. General:

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR Part 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR Part 770 et seq.).

D. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions:

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C(2), C(3), and C(4) below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- a. Sales of products or components, or
- b. Licenses of software or documentation related to sales of products or components, or
- c. Transfer to foreign subsidiaries of the COMPANY member entities for purposes related to this Agreement, or
- d. Transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement, or
- e. Releases pursuant to Article VI hereof ("Publication").

2. The COMPANY shall provide timely notice to the Government of any proposed transfers of Technology developed under this Agreement to Foreign Firms or Institutions. If the Government determines that the transfer

may have adverse consequences to the national security interests of the United States, the COMPANY and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the COMPANY.

3. In any event, the COMPANY shall provide written notice to the Government AO's Representative and AO of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the COMPANY's written notification, the Government AO shall advise the COMPANY whether it consents to the proposed transfer. In cases where the Government does not concur or if within sixty (60) calendar days after its receipt the Government has provided no decision, the COMPANY may utilize the procedures under Article IV, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by the government takes place, the COMPANY shall (a) refund to the Government those funds paid under this OTA for the development of the Technology and (b) provide to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government, the COMPANY shall obtain and provide written confirmation of such licenses.

E. Lower Tier Agreements:

The COMPANY shall include this Article, suitably modified, to identify the Parties, in all Agreements or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

F. Export Control:

Export Compliance. Each Party agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; And the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each Party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one Party to another under this Agreement. Accordingly, the COMPANY shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

G. Flow down:

The COMPANY shall include this Article, suitably modified, to identify all Parties, in all lower tier agreements. This Article shall, in turn, be included in all sub-tier subcontracts or other forms of lower tier agreements, regardless of tier.

ARTICLE X: OPERATIONAL SECURITY (OPSEC)

A. OPSEC Standing Operating Procedure (SOP)/Plan:

Prior to the exchange of classified information in connection with the program, the COMPANY shall develop an OPSEC Standing Operating Procedure (SOP)/Plan to be reviewed and approved by the responsible Government OPSEC officer, per AR 530-1, Operations Security. The COMPANY should use the provided Security Classification Guides (SCGs) to develop their SOP. The SOP/Plan will specify the Government's critical information, why it needs to be protected, where it is located, who is responsible for it, and how to protect it. In addition, the COMPANY shall identify an individual who will be an OPSEC Coordinator and will ensure this individual becomes OPSEC Level II certified per AR 530-1. The Government will evaluate the COMPANY'S OPSEC performance on an annual basis or as conditions warrant. The COMPANY shall implement an employee verification process, whether through background checks or other similar processes, and provide a written response explaining how the verification process was completed and attest to the trustworthiness of the workforce.

B. Access and General Protection/Security Policy and Procedures:

1. All COMPANY employees working in the Program, including subcontractor employees, and requiring access to a Government installation shall comply with all installation and facility access and local security policies and

procedures (provided by Government representative), and security/emergency management exercises when performing work or otherwise entering Government property in connection with the Program.

2. The COMPANY and all associated subcontractor employees working in the Program and requiring access to a Government installation shall provide all information required for background checks to meet installation access requirements to be accomplished by the Installation Provost Marshal Office, Director of Emergency Services, or Security Office. The COMPANY workforce shall comply with all personal identity verification and accountability requirements as directed by DoD, HQDA, and/or local policy. Should the Force Protection Condition (FPCON) at any individual facility or installation change, the Government may require changes in COMPANY security matters or processes. During FPCONs Charlie and Delta, services/installation access may be discontinued/postponed due to higher threat. Services will resume when FPCON level and/or threat is reduced to an acceptable level as determined by the Installation Commander. COMPANY persons working on an installation shall participate in the installation Random Antiterrorism Measures Program as directed. COMPANY shall be subject to and comply with vehicle searches, wearing of ID badges, etc.

C. iWATCH (See Something, Say Something) Training:

All COMPANY employees working in the Program, including subcontractor employees, and requiring access to a Government installation/Government property, shall receive training and participate in the local iWATCH program (training standards provided by the AOR). This locally developed training will be used to inform employees of the types of behavior to watch for and instruct employees to report suspicious activity to the AOR. This training shall be completed within date agreed upon at the PAC and then annually thereafter. The COMPANY shall submit certificates of completion for each affected COMPANY employee and subcontractor employee to the AOR within 14 calendar days after completion of training by all employees and subcontractor personnel.

D. AT Level I Training:

All COMPANY employees working on the Program, to include subcontractor employees, requiring access to Army installations, facilities and controlled access areas shall also complete AT Level I awareness training within 30 calendar days after project start date. The COMPANY shall submit certificates of completion for each affected COMPANY employee and subcontractor employee, to the AOR, within 30 calendar days after completion of training by all employees and subcontractor personnel. AT Level I awareness training is available at the following website: <http://jko.jten.mil>.

E. Threat Awareness Reporting Program (TARP) Training:

COMPANY employees with security clearances shall receive annual TARP training by a counterintelligence agent or other trainer/method as specified in AR 381-12.

F. Safeguarding Covered Defense Information and Cyber Incident Reporting

COMPANY shall comply with DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting as applicable.

G. Access to DoD Facility or Installation:

All COMPANY employees working on the project, including subcontractor employees, and requiring access to a Government installation shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-111) and Terrorist Screening Database (TSDB) (Army Directive 2014-05/AR 190-13); applicable installation, facility and area commander installation and facility access and local security policies and procedures (provided by the AOR).

H. Information Management Army Information Technology/IA:

The COMPANY shall be capable of accessing, handling, receiving and storing UNCLASSIFIED documents, equipment, hardware and test items using the applicable standards of For Official Use Only (FOUO) information. All Controlled Unclassified Information (documents designated as FOR OFFICIAL USE ONLY and/or LIMITED DISTRIBUTION) shall be submitted by a controlled means using UPS mail, Safe Access File Exchange (SAFE) website and/or DoD Army approved encryption software as per AR 25-1.

I. For Official Use Only Information (FOUO) and Controlled Unclassified Information (CUI):

COMPANY personnel shall be capable of accessing, handling, receiving and storing UNCLASSIFIED documents, equipment, hardware and test items using applicable standards of FOUO and CUI.

J. Public Release of Information:

In accordance with AR 530-1 (or DoDM 5205.02-M), an OPSEC review will be performed by the Government prior to all public release of information. All Government information intended for public release by COMPANY shall undergo a Government OPSEC review prior to release. The OPSEC review will be performed as part of the Public Review Process described in Article VI.

K. Additional OPSEC Requirements:

1. The COMPANY shall comply with:
 - a. the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M); and
 - b. any revisions to the DoD 5220.22-M, notice of which has been furnished to the vendor.
2. Companies shall report all foreign ownership, control or influence (FOCI) as defined in 32 CFR 117.56. If FOCI exist, the COMPANY shall define the percentage owned.

ARTICLE XI: TITLE AND DISPOSITION OF PROPERTY

A. Definitions:

In this Article, "property" means any tangible personal property other than property actually consumed during the execution of work under this Agreement.

B. Title to Property:

No significant items of property are expected to be acquired with Government funds under this Agreement by the COMPANY. Title to any item of property valued \$10,000 or less that is acquired by the COMPANY with Government funds in performance of the Program covered by this Agreement shall remain with the COMPANY with no further obligation of the Parties unless otherwise determined by the AO. Should any item of property with an acquisition value greater than \$ 10,000 be required to be purchased with Government funds, the COMPANY shall obtain prior written approval of the AO. Title to this property shall also remain with the COMPANY. The COMPANY shall be responsible for the maintenance, repair, protection, and preservation of all such property at its own expense. Property acquired pursuant to this clause shall not be considered as in exchange for services in performance of the Program but shall be considered a Government contribution to the Program.

C. Government Furnished Property/Information:

The Government may provide the COMPANY Government Furnished Property/Information (GFP/GFI), to facilitate the performance of the Agreement. The GFP/GFI shall be utilized only for the performance of the Agreement unless a specific exception is made in writing by the AO. GFI/GFP provided to the COMPANY is listed at Attachment # 4 and incorporated herein.

All property shall be returned at the end of the Agreement in as good as condition as when received with the exception of reasonable wear and tear or in accordance with the provisions of the Agreement regarding its use. The COMPANY shall obtain explicit written authorization for any transfer or disposition of Government Furnished Property.

ARTICLE XII: SAFETY AND ENVIRONMENTAL REQUIREMENTS

A safety survey will be conducted by the Government prior to the Government's handling of explosives, production of any hardware or fire testing of any deliverable provided by COMPANY to the Government under this Agreement. COMPANY shall provide safety information about the deliverable as reasonably requested by the Government for the Government to conduct this survey.

The COMPANY shall adhere to and require its subcontractors to adhere to all applicable laws and regulations in the performance of this Agreement, including applicable environmental requirements.

ARTICLE XIII: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) as between this Agreement and its Attachments, this Agreement shall control; and (2) as between Attachment 1 and any other Attachment, Attachment 1 shall control. As between Attachment # 3: DD 254, Attachment # 4: GFI/GFP List, and Attachment # 6: Line Item Structure/Payment Schedule Attachment # 6 controls. Between Attachment # 3 and Attachment # 4 Attachment # 4 controls. Attachment #5: Statement of Objectives (SOO) is attached for reference purposes only as stated in Article I.D and is not binding on the parties.

ARTICLE XIV: MODIFICATIONS

All Agreement modifications, except for minor or administrative corrections, shall be made by mutual agreement of the Parties and shall be subject to negotiations between the Parties. Minor administrative Agreement modifications (e.g. changes in paying office or appropriation data, changes to the Government personnel identified in the Agreement, changes in funding, etc.) may be unilaterally modified by the Government.

The Government will be responsible for effecting all modifications to this Agreement. The Agreement shall not be considered modified unless there is a formal written modification to the Agreement signed by Company and the Agreements Officer.

ARTICLE XV: DISCLAIMER OF WARRANTIES

Microsoft provides no warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

ARTICLE XVI: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. By executing this agreement, the COMPANY affirms that it is a non-traditional defense contractor as defined by 10 USC 2302(9).

ARTICLE XVII: COMPTROLLER GENERAL ACCESS TO INFORMATION

A. Comptroller General Access to Records:

To the extent that the total Government payments under this Agreement exceed [REDACTED], the Comptroller General, at its discretion, shall have access to and the right to examine records of any Party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement for a period of [REDACTED] after final payment is made. This requirement shall not apply with respect to any Party to this Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such Party or entity, that has not entered into any other agreement (contract, grant, cooperative agreement, or "other transaction") that provides for audit access by a government entity in the year prior to the date of this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. The terms of this paragraph shall be included in all sub-agreements to the Agreement other than sub-agreements with a component of the U.S. Government.

B. Audit:

The right provided to the Comptroller General is limited as provided in paragraph A above in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of this title.

ARTICLE XVIII: PROGRAM MANAGEMENT

A. Integrated Product Teams (IPT):

The COMPANY shall reasonably participate in Government established IPTs with other vendors to resolve technical issues to enable interoperability with IVAS and other devices/equipment/software procured from other sources.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE XIX: ATTACHMENTS

The Attachment listed below are hereby incorporated to the Agreement unless otherwise indicated below:

Attachment # 1: Microsoft IVAS Solution Complete Proposal_as of 8 May 2019

Attachment # 2: Data Requirements List dated 31 March 2020

Attachment # 3: DD 254

Attachment # 4: GFI/GFP List_as of 7 July 2020

Attachment # 5: SOO (*For Reference Purposes Only*)

Attachment # 6: Line Item Structure/Payment Schedule_as of 12 May 2020

Attachment # 7: Letter to Microsoft [REDACTED]_20190718

Attachment # 8: CS2 Prototype GFE Tracking Instructions

Attachment # 9: Security Classification Guide_dated 1 August 2019

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Attachment #10: Title of Transfer of Ownership to the Government_signed 20 November 2019

Attachment #11 Software_Non-disclosure Agreement/Employee Agreement signed 13 April 2020

(End of Summary of Changes)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE		PAGE OF PAGES	
						1 24	
2. AMENDMENT/MODIFICATION NO. P00016		3. EFFECTIVE DATE 12-May-2020		4. REQUISITION/PURCHASE REQ. NO. SEE SCHEDULE		5. PROJECT NO. (If applicable)	
6. ISSUED BY ACC - APG - W91CRB BLDG 4310 6515 INTEGRITY COURT ABERDEEN PROVING GROUND MD 21005-3013		CODE W91CRB		7. ADMINISTERED BY (If other than item 6) See Item 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) MICROSOFT CORPORATION MICROSOFT [REDACTED] 1 MICROSOFT WAY REDMOND WA 98052-8300				9A. AMENDMENT OF SOLICITATION NO.			
				9B. DATED (SEE ITEM 11)			
				X 10A. MOD. OF CONTRACT/ORDER NO. W91CRB1990001			
				X 10B. DATED (SEE ITEM 13) 20-Nov-2018			
CODE 60128		FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS							
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.							
12. ACCOUNTING AND APPROPRIATION DATA (If required)							
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.							
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.							
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).							
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Agreement Article XIV Modifications							
D. OTHER (Specify type of modification and authority)							
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.							
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Modification Control Number: [REDACTED] Obligation Amount: \$0.00 This no cost, bilateral modification: 1. Incorporates updated Attachment #4 titled "GFP-GFI List_as of 7 July 2020" 2. Incorporates updated Attachment #6 titled "Line Item Structure-Payment Schedule_as of 12 May 2020" POC: [REDACTED] All other terms and conditions under this Agreement, as executed on 20 November 2018, inclusive of any subsequent, executed, modifications and attachments thereto, remain unchanged.							
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.							
15A. NAME AND TITLE OF SIGNER (Type or print) [REDACTED]				16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) [REDACTED]			
15B. CONTRACTOR/OFFEROR [REDACTED]				16B. UNITED STATES OF AMERICA BY [REDACTED]			
15C. DATE SIGNED <i>1/20/20</i>				16C. DATE SIGNED 31 JULY 2020			
(Signature of person authorized to sign)				(Signature of Contracting Officer)			

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SECTION SF 30 BLOCK 14 CONTINUATION PAGE

SUMMARY OF CHANGES

SECTION C - DESCRIPTIONS AND SPECIFICATIONS

The following have been modified:

AGREEMENT

OTHER TRANSACTION AGREEMENT BETWEEN
The United States of America
AND
The Microsoft Corporation

Agreement No.: W91CRB-19-9-0001

This Other Transaction Agreement ("OTA" or "Agreement") is entered into between the United States of America, hereinafter called the Government, pursuant to and under U.S. Federal law, and the Microsoft Corporation, hereinafter called the Company or Microsoft, with an address at One Microsoft Way, Redmond, WA 98052.

Agreement Term: The term of this Agreement is [REDACTED] from the Effective Date. The maximum value of the Prototype Project to be awarded under the terms and conditions of this Agreement is [REDACTED]

Authority: 10 U.S.C. § 2371b(a), Section 815, Amendments to Other Transaction for Prototype Agreement, of the National Defense Authorization Act (NDAA) for Fiscal Year 2018 which inserted Section 2371b, Authority of the Department of Defense to carry out Prototype Projects and as further amended up to the date of execution of this Agreement.

Check one:

Company X IS/ IS NOT a NON-TRADITIONAL DEFENSE CONTRACTOR. As per 10 USC 2302(9) a Non-Traditional Defense Contractor is an entity that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is subject to full coverage under the cost accounting regulations implementing such section.

Signature of Authorized Company Representative

Printed Name

Title

Date

7/30/2020